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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/635,356	08/06/2003	Anubhav P.S. Narula	IFF-60	8902		
48080	7590 11/15/2005		EXAMINER			
INTERNAT	IONAL FLAVORS &	COLE, MC	COLE, MONIQUE T			
NEW YORK, NY 10019			ART UNIT	PAPER NUMBER		
·			1743			

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extension of them may be waited used the previous of 37 CFR 1.13(a), he ne event, however, may a reply be limbly filled If NO period for reply is pecified above, the maximum statutory period will apply and will acute SIX (6) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory period will apply and will acute SIX (6) MONTHS from the mailing date of this communication. Pallow to reply which the set or excended period for reply in specified above, the maximum statutory period will apply and will acute SIX (6) MONTHS from the mailing date of this communication. Pallow to reply which the set or excended period for reply will, by statifus, cause the segulation. Pallow to reply which the set or excended period for reply will, by statifus, cause the segulation of the maximum statutory exceed by the communication, even if timely filled, may reduce any sense placetia time segulation. Pallow to replace the communication (s) filed on 30 August 2005. Status 1) Responsive to communication (s) filed on 30 August 2005. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the ments is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1 and 5-22 is/are pending in the application. 4) Claim(s) 1 and 5-22 is/are rejected. 5) Claim(s) 1 and 5-22 is/are rejected. 7) Claim(s) 1 and 5-22 is/are rejected to by the Examiner. 4) Claim(s) 1 and 5-22 is/are rejected to by the Examiner. 10 The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. 4) Claim(s) 1 and 5-22 is/are rejected to by the Examiner. 10 The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. 4) Paper Notal All b) Som									
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Monique T. Cole 1743	Office Action Summary		10/635,356		NARULA, ANUBHAV P.S.				
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Application/Control Number: 10/635,356

Art Unit: 1743

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by USP 4,276,431 to Schnegg et al. (herein referred to as "Schnegg").

Schnegg teaches a compound of Formula II that embraces the scope of the compound instantly claimed. See col. 3, lines 7-26.

Claim Rejections - 35 USC § 103

- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 4. Claims 1, 5 and 6-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 4,624,802 of USP 4,652,401.

The '802 patent teaches a compound of formula as recited at col. 1, lines 25-38. The '401 teaches a compound

The patent compound differs in that there may be an additional alkyl substituent on the benzyl ring. However, compounds that are position isomers (compounds having the same radicals in physically different positions on the same nucleus) or homologs (compounds differing

regularly by the successive addition of the same chemical group, e.g., by -CH2- groups) are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties. In re Wilder, 563 F.2d 457, 195 USPQ 426 (CCPA 1977). See also In re May, 574 F.2d 1082, 197 USPQ 601 (CCPA 1978) (stereoisomers prima facie obvious). Thus, it would have been obvious to one of ordinary skill in the art to make the claimed compound absent the additional alkyl substituent with the reasonable expectation of deriving a useful perfuming compound, absent any evidence to the contrary.

5. Claims 1 and 5-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 4,652,401.

The '401 patent teaches a compound of Formula I. See col. 1, lines 25-35.

The patent compound differs in that it teaches only an R group with 6 carbon atoms. However, compounds that are position isomers (compounds having the same radicals in physically different positions on the same nucleus) or homologs (compounds differing regularly by the successive addition of the same chemical group, e.g., by -CH2- groups) are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties. In re Wilder, 563 F.2d 457, 195 USPQ 426 (CCPA 1977). See also In re May, 574 F.2d 1082, 197 USPQ 601 (CCPA 1978) (stereoisomers prima facie obvious). Thus, it would have been obvious to one of ordinary skill in the art to make the claimed compound absent the additional alkyl substituent with the reasonable expectation of deriving a useful perfuming compound, absent any evidence to the contrary.

Claims 1 and 5-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,458,757.

This patent teaches a compound as described at col. 1, lines 40-67.

The patent compound differs in that there may be an additional alkyl substituent on the benzyl ring. However, compounds that are position isomers (compounds having the same radicals in physically different positions on the same nucleus) or homologs (compounds differing regularly by the successive addition of the same chemical group, e.g., by -CH2- groups) are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties. In re Wilder, 563 F.2d 457, 195 USPQ 426 (CCPA 1977). See also In re May, 574 F.2d 1082, 197 USPQ 601 (CCPA 1978) (stereoisomers prima facie obvious). Thus, it would have been obvious to one of ordinary skill in the art to make the claimed compound absent the additional alkyl substituent with the reasonable expectation of deriving a useful perfuming compound, absent any evidence to the contrary.

Response to Arguments

- 6. Applicant's arguments with respect to the Schaper reference have been considered but are most in view of the new ground(s) of rejection.
- 7. Applicant's arguments filed 8/30/2005 have been fully considered but they are not persuasive.

Applicant has argued that the Storet reference is not a proper homolog of the claimed invention. Additionally, applicant argues unexpected results as between the Storet compound and that of the claimed invention. However, the arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration include statements regarding unexpected results, commercial

success, solution of a long-felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant.

Objective evidence which must be factually supported by an appropriate affidavit or declaration to be of probative value includes evidence of unexpected results, commercial success, solution of a long-felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant. See, for example, In re De Blauwe, 736 F.2d 699, 705, 222 USPO 191, 196 (Fed. Cir. 1984) ("It is well settled that unexpected results must be established by factual evidence." "[A]ppellants have not presented any experimental data showing that prior heat-shrinkable articles split. Due to the absence of tests comparing appellant's heat shrinkable articles with those of the closest prior art, we conclude that appellant's assertions of unexpected results constitute mere argument."). See also In re Lindner, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972); Ex parte George, 21 USPQ2d 1058 (Bd. Pat. App. & Inter. 1991).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this 8. Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE. MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique T. Cole whose telephone number is 571-272-1255. The examiner can normally be reached on Monday, Tuesday & Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

> Monique T. Cole **Primary Examiner** Art Unit 1743

mtc